

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

ARTHUR D. MOBLEY,  
Plaintiff-Appellant,

v.

No. 96-2111

RICHARD RUDEZ; HENRY PANKIE;  
JOHN BAKER; DANIEL KAHN,  
Defendants-Appellees.

Appeal from the United States District Court  
for the District of Maryland, at Baltimore.  
John R. Hargrove, Senior District Judge.  
(CA-96-1685-HAR)

Submitted: November 26, 1996

Decided: January 21, 1997

Before ERVIN, NIEMEYER, and MOTZ, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Arthur D. Mobley, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Appellant appeals the district court's sua sponte dismissal of his civil action. Appellant's complaint sought damages for alleged conduct by his supervisors and others at the United States Postal Service whose actions he claims forced him into disability retirement. The district court dismissed Appellant's complaint on its own motion under Fed. R. Civ. P. 12(b)(6). We vacate and remand for further consideration.

A court may, on its own initiative, dismiss a civil complaint for failing to state a claim. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 301 (2d ed. 1990). In such situations, however, notice and an opportunity to be heard are normally required. E.g., Ricketts v. Midwest Nat'l Bank, 874 F.2d 1177, 1184-85 (7th Cir. 1989). Although this Court has not directly addressed the notice issue in the context of a sua sponte dismissal under Rule 12(b)(6), we have held that notice and an opportunity to be heard are required, regardless of the merits, prior to a sua sponte summary judgment under Fed. R. Civ. P. 56. United States Dev. Corp. v. Peoples Fed. Sav. & Loan Ass'n, 873 F.2d 731, 736 (4th Cir. 1989).

Because Appellant did not receive notice of the district court's intention to enter a Rule 12(b)(6) dismissal, we vacate the judgment of the district court and remand for further proceedings consistent with this opinion. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### VACATED AND REMANDED